

REMARKS

Claims 1-18 were examined in the non-final Office Action mailed September 8, 2008. Claims 1-18 stand rejected for antecedent basis issues and also stand rejected as obvious over U.S. Publication No. US 2002/0099640 to *Lange* in view of U.S. Publication No. 2004/0176990 to *Vacante, et al.* and "Official Notice".

Claims 1-4, 7 and 10-14 are amended, with no new matter added thereby. Claim 8 is cancelled. Claims 1-7 and 9-18 remain pending. Reconsideration of the rejections is requested in view of the above amendments and the following remarks.

A. 35 U.S.C. § 112, 2nd Paragraph Rejection is Addressed.

The 35 U.S.C. 112, 2nd paragraph rejection of claims 1-18 is respectfully traversed in view of the amendments above. The Examiner's careful review of the claims and identification of variations in claim language are very much appreciated. By amendments above, claims 1-7 and 9-11 now consistently claim a "single eroding futures contract" and claims 12-18 clearly recite a "variable quantity single futures contract". Withdrawal of the § 112, 2nd paragraph rejection is respectfully requested.

B. Obviousness Rejection of Claims 1-18 over *Lange* in view of *Vacante* and "Official Notice" is Addressed.

The 35 U.S.C. 103(a) rejection of claims 1-18 is respectfully traversed, it being noted that the rejection is moot relative to cancelled claim 8.

The rejection is premised on a conclusion on page 3 of the Office Action that the "single eroding futures contract" (of claims 1-7 and 9-11) and the "variable quantity single futures contract" (of claims 12-18) are "substantially equivalent" to the "traded strip of *Lange*". This interpretation is incorrect, as each of the claimed methods requires **a single futures contract traded on a regulated exchange**, and an initial **margin for that single futures contract which changes as a result of a part settlement of that single contract**.

1. *Lange* Teaches Only Groups of Futures Contracts Implying Multiple Margin Calculations for an Eroding Strip

The claimed methods are different than the methods associated with *Lange*'s groups of futures contracts, each having different expiration dates. A strip is clearly defined in *Lange* as follows:

[0708] 6.4 Digital Option Strips

[0709] **Traders in the derivatives markets commonly trade related groups of futures or options contracts** in desired ratios in order to accomplish some desired purpose. For example, it is not uncommon for traders of LIBOR based interest rate futures on the Chicago Mercantile Exchange ("CME") to execute simultaneously a group of futures with different expiration dates covering a number of years. **Such a group, which is commonly termed a "strip," is typically traded to hedge another position which can be effectively approximated with a strip whose constituent contracts** are executed in target relative ratios. For example, a strip of LIBOR-based interest rate futures may be used to approximate the risk inherent of an interest rate swap of the same maturity as the latest contract expiration date in the strip.

Despite this explicit definition, the Office asserts that while

... Lange does not specifically state, word for word, that the digital strip involves a *single futures contract* which includes multiple settlement quantities and associated settlement dates ...

... the examiner believes the teachings of Lange do teach or *at least strongly suggest* that Lange's digital strip is substantially equivalent to Applicant's Eroding Futures Contract." ...

Lange certainly does not explicitly teach a strip being a single futures contract. It explicitly teaches just the opposite—a strip includes constituent contracts. The belief that Lange "strongly suggests" a conclusion that a digital strip having multiple constituent contracts is substantially equivalent to "Applicant's Eroding Futures Contract"—is without support in *Lange*.

Furthermore, independent claim 1 does not recite generically an Eroding Futures Contract as asserted, it specifically recites "a single eroding futures contract" and claim 12 does not recite generically an Eroding Futures Contract, it recites "a variable quantity single futures contract". The significance of the precisely claimed single futures contract and the initial margin associated therewith is that the initial margin for the claimed single eroding futures contract is adjusted as a result of a part settlement of that single eroding futures contract. This results in different risk calculations and margin requirements than with strip contracts. As noted at paragraph [0048] of the present specification, in the case of a single eroding futures contract in accordance with the present invention, the initial margin value changes upon each settlement event to reduce or erode the initial margin for a contract in

proportion to the reduction in the value of the open position for that contract. In contrast, for a strip, for risk calculated at the same periodic rate, risk is expected to be calculated on all futures contracts of the strip remaining unsettled. These multiple calculations may result in multiple margin calls.

Thus, the values and risks associated with the claimed margin of a single eroding futures contract of independent claim 1 and the variable quantity single futures contract of claim 12 are not equivalent to those taught and implied by the strip defined by *Lange*. This patentably distinguishable difference also applies to dependent claims 2-7, 9, 10 and 13-18.

2. *Vacante* Constitutes Non-analogous Art and Fails to Teach an Eroding Futures Contract Traded on a Regulated Exchange or Initial Margins.

As is clear from a fair reading of *Vacante*, taken as a whole *Vacante* relates to trading of a futures contract for purchase of resellable of goods or services by purchasers, sellers and third-party purchasers through a network. See paragraph [0029]. These contracts often involve specially negotiated non-standard contract terms (see paragraph [0015]) and multiple offers and counteroffers (see paragraph [0018]). Nowhere is the phrase "regulated exchange" or its equivalent identified. This explains why the example of risk given in *Vacante* relates to a seller of a future wanting to ensure that the purchasers of the future is the rightful owner. See paragraph [0022], and also paragraphs [0023] and [0024] relating to proxies, public keys, verified digital signatures and digital certificates. *Vacante* is silent regarding risk management, initial margins, or margin recalculation for a single eroding futures contract traded on a regulated exchange with which is associated a margin.

MPEP 2141.01(a) states that "to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992). "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *Wang Labs. Inc. v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993).

It can be seen in the present case, the field's of endeavor are different:

- The field of applicant's endeavor relates to automatically settling futures contracts on an eroding basis, with such futures contracts traded exclusively on regulated exchanges.
- The field of endeavor of *Vacante* relates to purchases of goods or services in advance and the problems associated uncertain future need, wasting valuable inventory and storage space and suffering consequences of accepting unwanted good or service or cancelling a contract.

The question then becomes, would *Vacante*, because of the matter with which it deals, logically have commended itself to the inventors considering their problem.

- *Vacante* never mentions the phrase "regulated exchange" or equivalent. *Vacante* never mentions "margin" for purposes of controlling risk. *Vacante* is concerned with a risk of whether a purchaser is who he says he is.
- The problem the inventors are trying to solve is how to track and manage risk associated with a single eroding futures contract being traded on a regulated exchange.

Thus, given the problem addressed in the particular case, which does not simply relate to a system of purchasing and reselling of goods and services as taught by *Vacante*, *Vacante* would not have commended itself to the inventors hereof. Thus, *Vacante* constitutes non-analogous art and *prima facie* obviousness has not been established in the absence of *Vacante*.

Assuming, *arguendo*, that *Vacante* constitutes analogous art, even in combination, *Lange* and *Vacante* fail to teach or suggest an initial margin for a single eroding futures contract traded on a regulated exchange which changes after each final part settlement of the claimed single eroding futures contract.

Regarding the "Official Notice", while Official Notice may be taken that a typical futures contract may be settled early at any time up through the final settlement date through payment or delivery of the underlying commodity, once so settled, a single, constituent futures contract of a strip is no longer open. There is no longer any margin requirement for that individual particular futures contract. In contrast, what is claimed is the settlement of one of a plurality of settlement events of a single eroding futures contract and the effect on the margin of that single eroding future contract

Moreover, it does not follow that "*Vacante* [] strongly suggest[s] trading on a

regulated exchange". There is no such suggestion in *Vacante*. The Examiner is asked to specifically point out in *Vacante* the support for this conclusion. In fact, it is completely reasonable to conclude to the contrary, that in the goods and services trading scheme proposed by *Vacante*, the governmental regulation required for a "regulated exchange" might not be desired by participating businesses due to (a) the substantial costs associated with the reporting requirements of companies registered on regulated exchanges, which might well increase the costs of the traded goods and services and (b) a desire of the trading companies to limit knowledge of their contracts to a small group of similarly situated companies. Accordingly, the argument that "Lange and *Vacante* both strongly suggest trading on a regulated exchange simply because they both teach trading various types of futures" is both inaccurate and without support.

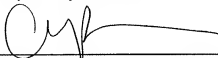
In conclusion, independent claims 1 and 12 and dependent claims 2-7, 9, 10 and 13-18 are patentably distinguishable and non-obvious over a combination of *Lange*, *Vacante* and "Official Notice" for the reasons given above. Withdrawal of the obviousness rejection of claims 1-7 and 9-18 is proper and respectfully requested.

C. Conclusion

Claims 1-7 and 9-18 being patentably distinguished over the references of record and in form for allowance, such action is respectfully requested. The Examiner is asked to kindly telephone the undersigned, should any issues remain. The undersigned petitions for a 2-month extension to extend the due date for response to February 9, 2009 (February 8, 2009 being a Sunday). Please charge Deposit Acct. No. 50-1123 the 2-month extension fee and any other required fees.

February 9, 2009

Respectfully submitted,



Carol W. Burton, Reg. No. 35,465
Hogan & Hartson LLP
One Tabor Center
1200 17th Street, Suite 1500
Denver, Colorado 80202
(303) 454-2454 Tel
(303) 899-7333 Fax